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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 347

TASTY BAKING COMPANY,
Petitioner,

vs.

THE UNITED STATES.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS AND BRIEF IN SUPPORT THEREOF.

HUGH SATTERLEE,
Counsel for Petitioner.

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THE UNITED STATES.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS AND BRIEF IN SUPPORT THEREOF.

Petition.

Petitioner respectfully prays that a writ of certiorari issue to review a judgment of the Court of Claims which dismissed after trial a petition in an action brought by the petitioner to recover taxes upon the processing of coconut oil and coconut oil mixtures which were exacted of the petitioner by the respondent in reliance on Section 602½ of the Revenue Act of 1934 (48 Stat. 680-763; 26 U. S. Code, Sec. 999) (R. 14).

Question Presented.

The question presented is:

Whether the excise tax imposed by Section 602½ (a) of the Revenue Act of 1934 on the first domestic processing of

coconut oil and coconut oil mixtures includes within its scope a second domestic processing by the petitioner after May 10, 1934, the effective date of the Act, of oil and mixures which had received a previous and first domestic processing by petitioner's vendors prior to May 10, 1934.

Statutes and Regulations Involved.

The pertinent portions of the applicable statutes and regulations are set forth in the Appendix (*infra*, pages 13 to 16).

Statement.

Section 602½ (a) of the Revenue Act of 1934 (48 Stat. 680-763; 26 U. S. Code, Sec. 999) imposed a tax of three cents per pound upon "the first domestic processing" of coconut oil and coconut oil mixtures and specifically defined the term "first domestic processing" as "the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed."

At the time the statute was passed, petitioner owned 504,875 pounds of refined coconut oil and 117,688 pounds of mixtures containing refined coconut oil which it had purchased from suppliers in the United States for use in the manufacture of its bakery products. All of such oil, including that contained in the mixtures, had been previously processed in the United States in the manufacture of an article intended for sale, that is, the persons from whom the petitioner bought had processed in the United States crude coconut oil to make the refined product which they intended to sell and did sell (R. 7). There was also a small quantity of refined coconut oil and mixtures containing refined coconut oil which petitioner acquired subsequently to the passage of the statute, which oil and mixtures, however, had been processed in the United States prior to the passage of the statute. After the passage of the statute, petitioner

used all of such oil and mixtures in the manufacture of its bakery products (R. 7).

It thus clearly appears and is wholly undisputed that all of the oil in question had been subjected to a domestic processing (*i. e.*, had been used in the United States in the manufacture or production of an article intended for sale) before petitioner bought it and that the petitioner's subsequent use thereof was not the first domestic processing of it.

However, the regulations promulgated by the Commissioner of Internal Revenue depart from the words of the statute and define the term "first domestic processing" to mean "the first use in the United States *on or after the effective date of the Act*" (Italics ours), and, pursuant to such regulations, petitioner was required to pay and did under protest pay taxes aggregating $18,309.76.

On April 10, 1935, petitioner filed its claim for refund of the aforesaid taxes on the ground that petitioner's use of the coconut oil and coconut oil mixtures did not constitute a first domestic processing within the meaning of the statute (R. 8). On October 30, 1935, the Commissioner of Internal Revenue rejected the claim in full (R. 9-10), and on October 28, 1937, petitioner commenced this suit (R. 1).

All of the foregoing facts have been found by the Court of Claims.

Error Assigned.

The Court of Claims erred in holding that petitioner's use of the oil was taxable.

Reasons for Granting the Writ.

1. In reaching its conclusion that petitioner's use of the oil was a taxable transaction, the Court of Claims disregarded this Court's oft-repeated pronouncement that the denial of a writ of certiorari imports no expression upon the merits of a case and allowed itself to be largely gov-

erned and influenced by the denial of certiorari in *Loose-Wiles Biscuit Co.* v. *Rasquin*, 95 F. (2d) 438 (C. C. A. 2d, 1938), 305 U. S. 611, in which the same question presented by this case was involved (R. 13).

2. The decision of the Court of Claims, though in conformity with the *Loose-Wiles Biscuit Co.* decision by the Circuit Court of Appeals for the Second Circuit and with *Colgate-Palmolive-Peet Co.* v. *U. S.*, 37 Fed. Supp. 794, a decision of the District Court of Delaware which came down after the decision in this case, is in conflict with two other District Court decisions, namely, *Cincinnati Soap Co.* v. *U. S.*, 22 Fed. Supp. 141, and *Armour & Co.* v. *Harrison*, 19 A. F. T. R. 1347. In the *Armour* case, the Government took an appeal, but discontinued it and refunded to the taxpayer a large sum of money representing approximately 94 per cent of the refund of tax which the taxpayer was claiming. (See the stipulation for settlement reported in *Armour & Co. of Delaware* v. *Harrison*, 95 F. (2d) 993 (C. C. A. 7th (1937)). The *Colgate-Palmolive-Peet* case has been appealed to the Circuit Court of Appeals for the Third Circuit. The decision in the *Cincinnati Soap* case was on a demurrer filed by the Government, and petitioner understands that the case is now pending for the trial of certain issues of fact which the Government has raised.

3. The Court of Claims in its opinion remarks that, if this issue were before it as a matter of first impression, it would have doubt whether the Congress intended to tax oils in stocks that had previously been processed in the United States (R. 11). It resolves its doubt against the taxpayer because of the language of the regulations and because this Court refused a writ of certiorari in the *Loose-Wiles Biscuit Company* case, *supra*. The regulations were plainly intended to recognize the rule that statutes are to be given only prospective application and yet by a quirk of language

they reach exactly the opposite result. In the *Loose-Wiles Biscuit Company* decision the Circuit Court overlooks and disregards the definition of "first domestic processing" as the "first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed." It would be impossible to conceive of more fallacious reasoning than that which furnishes the only support to the Court of Claims' conclusion.

4. The case involves the construction of a revenue statute affecting numerous taxpayers, and it is to be expected that litigation of this question will continue until this Court finally decides it.

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari to review the judgment of the Court of Claims should be granted.

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Counsel for Petitioner,
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Washington, D. C.

August 4, 1941.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Opinion Below.

The opinion in the Court of Claims is reported in 38 Fed. Supp. 844 (R. 10).

Jurisdiction.

The judgment in the Court of Claims was entered May 5, 1941 (R. 14). This Court has jurisdiction to review the judgment below under Section 3 (b) of the Act of February 13, 1925, c. 229, 43 Stat. 939.

Statement.

A statement of the facts, question presented, statutes and regulations involved, and error relied upon, will be found in the foregoing petition.

ARGUMENT.

I.

The Court of Claims mistakenly treated denial of certiorari in the Loose-Wiles Biscuit Co. case as a decision by this Court on the merits.

This Court has frequently stated that the denial of a writ of certiorari is not to be taken as any indication of its views on the merits of a question. In *United States* v. *Carver*, 260 U. S. 482, 490 (1923), Justice Holmes, speaking for the Court, said:

> "The denial of a writ of certiorari imports no expression upon the merits of the case as the Bar has been told many times."

Similar observations have been made by this Court in *Atlantic Coast Line Railroad Company* v. *Powe*, 283 U. S. 402, 404 (1931), and *Hamilton-Brown Shoe Company* v. *Wolf Brothers Company*, 240 U. S. 251 (1916).

Notwithstanding these explicit pronouncements, the Court of Claims' opinion clearly shows that it viewed the denial of a writ of certiorari in the *Loose-Wiles Biscuit Co.* case as a persuasive factor in this case (R. 13), and it is a fair inference from the entire opinion that, had the Court observed the rulings of this Court as to lack of significance of a denial of certiorari, its decision might have gone the other way. We quote from the opinion (R. 13):

> "While the Supreme Court has stated that denial of a writ of certiorari adds no authority to the opinion sought to be reviewed, we feel that denial of the writ in *Loose-Wiles Biscuit Co.* v. *Rasquin, supra*, is a factor of some persuasive value in determination of the instant question. The court is aware of the limited purposes for which writs of certiorari are granted by the Supreme Court, and the restricted significance of denials thereof. *Hamilton-Brown Shoe Co.* v. *Wolf*, 240 U. S. 251; *United States* v. *Carver*, 260 U. S. 482; *Atlantic Coast Line R. R. Co.* v. *Powe*, 283 U. S. 401; *Stamey* v. *United States*, 37 Fed. (2d) 188; Rule 38, paragraph 5, Rules of the Supreme Court of the United States. However, it feels it worthwhile to indicate that the *Hamilton-Brown Shoe Company* case, wherein the Supreme Court apparently first had occasion to note the restricted significance of denials, involved refusal to review an interlocutory decree and that the court expressly recognized the nonfinality of the lower court's decree as a sufficient ground alone for refusing the writ. The *Carver* and *Powe* cases, *supra*—the other reported opinions in which the Supreme Court has spoken directly upon this subject—merely repeat the general proposition that denial of the writ imports no expression of opinion upon the merits of the case.

"The question involved in the petition for certiorari to the Supreme Court in the *Loose-Wiles* case, *supra,* was upon a final judgment of the lower court, was narrowly defined and was identical with that now before us. In these circumstances, we feel it proper not only to give thoughtful consideration to denial of the writ in that case, but to regard it as of some persuasive value in determination of the question here involved. See *United States* v. *Musselshell State Bank of Musselshell, Mont., et al.,* 60 F. (2d) 157, 159; *Hornell Ice & Cold Storage Co.* v. *United States,* 32 Fed. (Sup.) 468, 471."

II.

The statute taxes the first use of the oil in the United States in the manufacture of an article intended for sale, and, since plaintiff's use of the oil was admittedly not the first such use, it is not liable for the tax.

The tax imposed is not upon the oil, but upon the *use* of the oil. The use taxed is the first use in the United States and not the second, third, fourth or a subsequent use. Petitioner bought the oil and mixtures from companies which engaged in the business of refining and selling coconut oil and coconut oil products. It is undisputed that their use and not the petitioner's was the first use of the oil in the United States (R. 7).

The tax is imposed upon the first domestic processing of various oils or of any combination of oils with respect to any of which there has been no previous first domestic processing. In re *Loose-Wiles Biscuit Co.* opinion the repetition of the phrase "first domestic processing" was viewed as justifying the conclusion that it was equivalent to "taxable domestic processing", although clearly, in view of the definition that followed, the exact repetition reflected merely careful draftsmanship. The term "first domestic processing" is expressly defined to mean "the first use in the

United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed". In the *Loose-Wiles Biscuit Co.* opinion this explicit definition was not even referred to.

Under the statute, therefore, the "first domestic processing", that is, the "first use in the United States", is the specified event to which the tax attaches. By established statutory construction the tax is imposed only when the specified event, here the first use in the United States, occurs after the date of enactment of the statute. In the present case the first use in the United States had occurred prior to the enactment of the statute.

The Government does not dispute the intended prospective application of the statute and doubtless its regulations were initially drafted with no other thought. It was natural to bring out that the tax was imposed only on a specified event occurring after the effective date of the Act. If, for example, the tax had been on importation, the regulations could properly have read that the tax was imposed only on the importation of an article after the effective date of the Act, thereby excluding importations prior thereto. But a statement that the tax is imposed only on *the first* domestic processing *after* the effective date of the Act does not exclude, as the statute intended, first domestic processings, prior thereto, because the phrase is read as if "the domestic processing first after", etc.

Accordingly, the regulations by a trick of language appear to give the statute a prospective application, while in fact asserting for it a retroactive application. The imposition of a tax on the first domestic processing on or after the effective date of the Act, as provided by the regulations, is an entirely different thing from the imposition of a tax on first domestic processings which occur on or after the effective date of the Act, or on every first domestic processing

occurring on or after the date of the Act, as the statute clearly prescribes.

Although the regulations might properly indicate by appropriate language that only specified events, namely, first domestic processings, occurring on or after the effective date of the Act are subject to tax, they have no right to vary the *definition* in the statute of the specified taxable event, which is unequivocably stated to be the "first use in the United States". By no stretch of interpretation can the definition in the statute of "first domestic processing" be distorted to mean the first use in the United States after the effective date of the Act. Except for the well-established rule of construction, there might be some question whether first domestic processings occurring before the enactment of the statute should be subject to tax, but that would be an entirely different question from the meaning of "first domestic processing", as to which the statute permits no doubt that it is the "first use in the United States".

When the regulations state that "first domestic processing" means the "first use in the United States on or after the effective date of the Act", the statement is just as false and unfounded as though it read that "first domestic processing" means the "first use in the United States after next Christmas". There can only be one first use in the United States, regardless of the date of any statute, just as there can be only one importation of an article. And since first domestic processing is the first use in the United States, there can be only one first domestic processing. Whether such first domestic processing occurs before or after the effective date of the Act determines its taxability. When the regulations provide for tax on the first domestic processing after the effective date of the Act, instead of on such first domestic processings as occur after the effective date of the Act, they stultify the law through the shift in meaning of "first" from absolute to relative.

The legislative history of the statute confirms the intent of Congress as expressed in its language and provides no support for the labored interpretation of the *Loose-Wiles Biscuit Co.* decision. The report of the Committee on Ways and Means (No. 704, 73d Congress, 2d session, 1934, p. 41) states:

> " 'Processing' is defined as the first use of the oil in manufacture or production of an article for sale. The tax applies to processing in the United States, including the territories, but not the possessions. To prevent avoidance of the tax by the performance of preliminary processing outside of the United States, the tax is likewise imposed upon the first processing in the United States of mixtures or combinations in chief value of coconut oil or sesame oil, or of both oils."

As a matter of policy Congress desired to avoid a tax on importations from the Philippines and accordingly adopted as the taxable event the next step, namely, the first processing in the United States. In so doing it had no intention of subjecting to tax the second, third or fourth processing of oils which prior to the enactment of the statute had been both imported into the United States and undergone a first domestic processing.

Once the statute and the regulations be read with the radical difference in meaning between "first" and "first after" in mind, no possible ambiguity can be attributed to the statute and the only ambiguity is in the regulations, which should properly provide that the tax is imposed, not on the first domestic processing on or after the effective date of the Act, but on any and every first domestic processing occurring on or after the effective date of the Act, or on all first domestic processings on or after the effective date of the Act, or on all such first domestic processings as occur on or after the effective date of the Act. Of different forms of expression, only that used in the regulations

results in misrepresenting and obscuring the clear language of the statute.

Conclusion.

The duty of the Court of Claims was to decide the issue before it in accordance with the plain language and intent of the statute. This it did not do, but allowed itself to be swayed in its judgment by considerations outside the statute, as, for example, its assumption that the collection of the tax places no undue burden on those who had previously purchased stocks of coconut oil, but left them on the same level as their competitors who had not purchased such stocks (R. 14).

The writ prayed for should be granted.

Respectfully submitted,

HUGH SATTERLEE,
Counsel for Petitioner,
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Washington, D. C.

August 1, 1941.

APPENDIX.

Section 602½ of Revenue Act of 1934 (c. 277, 48 Stat. 680, 763—U. S. C., Title 26, Sec. 999).

Sec. 602½. Processing Tax on Certain Oils.

"(a) There is hereby imposed upon the first domestic processing of coconut oil, sesame oil, palm oil, palm kernel oil, or sunflower oil, or of any combination or mixture containing a substantial quantity of any one or more of such oils with respect to any of which oils there has been no previous first domestic processing, a tax of 3 cents per pound, to be paid by the processor. There is hereby imposed (in addition to the tax imposed by the preceding sentence) a tax of 2 cents per pound, to be paid by the processor, upon the first domestic processing of coconut oil or of any combination or mixture containing a substantial quantity of coconut oil with respect to which oil there has been no previous first domestic processing, except that the tax imposed by this sentence shall not apply when it is established, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, that such coconut oil (whether or not contained in such a combination or mixture), (A) is wholly the production of the Philippine Islands or any other possession of the United States, or (B) was produced wholly from materials the growth or production of the Philippine Islands or any other possession of the United States, or (C) was brought into the United States on or before the 30th day after the date of the enactment of this Act or produced from materials brought into the United States on or before the 30th day after the date of enactment of this Act, or (D) was purchased under a bonafide contract entered into prior to April 26, 1934, or produced from materials purchased under a bona fide contract entered into prior to April 26, 1934. All taxes collected under this section with respect to coconut oil wholly of Philippine production or produced from materials wholly of Phil-

ippine growth or production, shall be held as a separate fund and paid to the Treasury of the Philippine Islands, but if at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this subsection. For the purpose of this section the term 'first domestic processing' means the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed, but does not include the use of palm oil in the manufacture of tin plate."

Section 602½(f) of the Revenue Act of 1934 provides:

"All provisions of law (including penalties) applicable in respect of taxes imposed by section 600 of the Revenue Act of 1926, shall, insofar as applicable and not inconsistent with this section, be applicable in respect of the taxes imposed by this section."

Section 1120 of the Revenue Act of 1926, made applicable by Section 602½(f), provides for refund of taxes as follows:

"In the case of any overpayment or overcollection of any tax imposed by Title * * * VI, the person making such overpayment or overcollection may take credit therefor against taxes due upon any monthly return, and shall make refund of any excessive amount collected by him upon proper application by the person entitled thereto."

The pertinent Articles of Regulations 48 read as follows:

"Art. 1. Definitions.

* * * * * * *

"(j) Processing means the use of the oil or oils in the manufacture or production of an article intended for sale.

"(k) Use has a very broad meaning. The term includes, among other things, the using or making use of,

or employing, any one or more of the oils, or any combination or mixture of the oils, in any process, or stage or step in the manufacture or production of an article intended for sale, and includes the manufacture or production of such article in its entirety, whether such oil is used as a component or constituent or ingredient of the article, or is used merely as a means or aid in the manufacture or production of the article, and not as a component or constituent or ingredient. Examples which are in no measure all inclusive of the use contemplated are:

(1) Bleaching, neutralizing, refining, deodorizing, hydrogenating, sulphonating, 'twitchellizing,' polymerizing, saponifying, or any other commercial processing or any combination of these commercial processings, if such process or combination of processes produces an article intended for sale.

* * * * * * *

"(l) First domestic processing means the first use in the United States on or after the effective date of the Act. At all times in these regulations, the term processing or first domestic processing will be deemed to be synonymous with 'use' or 'first use in the United States on or after the effective date,' respectively, and will include the meanings implied in the latter terms by subdivision (k) above.

* * * * * * *

"Art. 2. Nature of the tax.—The tax is an excise, not a property tax. It is laid not upon the oils as such, or upon the sale of such oils, but only upon their use.

"Art. 3. Imposition of the tax.—The tax is imposed only on the first domestic processing on or after the effective date of the Act. However, no tax is imposed on the use of palm oil, by the processor, in the manufacture of tin plate.

"Art. 4. When tax attaches.—(a) The Tax attaches upon the first domestic processing of the oil. If some

part of the processing of a particular quantity of oil takes place on or after the effective date, the tax attaches notwithstanding that some part of the processing of such quantity took place before the effective date.

"(b) If oil has been subjected to any of the processes, either prior to the importation of such oil or prior to the effective date, or both, the tax attaches to the first domestic processing of such oil, after the effective date, in the manufacture or production of an article intended for sale."

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In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 347

TASTY BAKING COMPANY, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion below (R. 10–14) is reported in 38 F. Supp. 844.

JURISDICTION

The judgment of the Court of Claims was entered May 5, 1941 (R. 14). The petition for a writ of certiorari was filed August 4, 1941. The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended by the Act of May 22, 1939.

QUESTION PRESENTED

Whether the tax imposed by Section 602½ (a) of the Revenue Act of 1934 upon "the first domestic processing" of certain vegetable oils applies to the first domestic processing occurring after the effective date of the Act, where a domestic processing had occurred prior to the Act.

STATUTES AND REGULATIONS INVOLVED

The pertinent portions of the statute and regulations involved are set forth in the Appendix, *infra*, pp. 5–7.

STATEMENT

The facts as found by the court below may be summarized as follows:

Petitioner is a Pennsylvania corporation engaged in the manufacture and sale of bakery products (R. 6). On May 10, 1934, the effective date of the Revenue Act of 1934, it owned substantial quantities of refined coconut oil and of mixtures containing such oil (R. 6). Subsequently, it purchased additional quantities thereof which had been refined prior to May 10 (R. 7). During the period between May 10, 1934, and January 31, 1935, petitioner used all the oil, including that contained in the mixtures, in the manufacture of its bakery products (R. 7). During the same period it filed monthly tax returns showing such use and paid processing taxes thereon in the aggregate amount of $18,309.76 (R. 7). All of the

oil had been processed in the United States by petitioner's vendors prior to the effective date of the Act, but petitioner's use of it was the first domestic processing of it after the Act was effective (R. 7).

On April 10, 1935, petitioner filed a claim for refund of the taxes upon the ground, in substance, that the processing done by it was not the "first" processing within the meaning of Section 602½ (a) of the Act, which imposes a tax upon "the first domestic processing" of coconut oil and mixtures containing such oil (R. 8–9). On October 30, 1935, the Commissioner of Internal Revenue rejected the claim for refund (R. 9–10). Thereafter petitioner instituted the present suit in the Court of Claims to recover the above amount of taxes with interest (R. 1–5). The court dismissed the petition (R. 14). In construing Section 602½ (a) to apply to the processing by petitioner, the court followed the interpretation embodied in Treasury Regulations 48 and adopted by the Circuit Court of Appeals for the Second Circuit in *Loose-Wiles Biscuit Co.* v. *Rasquin,* 95 F. (2d) 438, certiorari denied, 305 U. S. 611, that the term "the first domestic processing," as used in the Act, means the first such processing occurring after the Act became effective, whether or not a domestic processing occurred prior to the Act (R. 12–14).

ARGUMENT

Although the court below may have laid undue stress upon the denial of certiorari in the *Loose-Wiles* case, its decision is nevertheless in accord with the Second Circuit's decision in that case, and no new grounds for review are presented here. Petitioner does not allege a conflict with any circuit court of appeals decision, and the district court decisions alleged to be in conflict were similarly relied upon in the petition in the *Loose-Wiles* case. Moreover, we are informed by the Bureau of Internal Revenue that although claims for refund in some one hundred similar cases were filed by taxpayers following the enactment of the Revenue Act of 1934, the claims of all but seven including petitioner have been disposed of during the past seven years. The decision is in accord with applicable Treasury Regulations (Articles 1, 3, 4, Regulations 48, Appendix, *infra*, pp. 6–7), and does not call for review by this Court. The petition should be denied.

Respectfully submitted.

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SAMUEL O. CLARK, Jr.,
Assistant Attorney General.
J. LOUIS MONARCH,
HUBERT L. WILL,
Special Assistants to the Attorney General.

SEPTEMBER 1941.

APPENDIX

Revenue Act of 1934, 48 Stat. 680:

SEC. 602½. PROCESSING TAX ON CERTAIN OILS.

(a) There is hereby imposed upon the first domestic processing of coconut oil, sesame oil, palm oil, palm kernel oil, or sunflower oil, or of any combination or mixture containing a substantial quantity of any one or more of such oils with respect to any of which oils there has been no previous first domestic processing, a tax of 3 cents per pound, to be paid by the processor. There is hereby imposed (in addition to the tax imposed by the preceding sentence) a tax of 2 cents per pound, to be paid by the processor, upon the first domestic processing of coconut oil or of any combination or mixture containing a substantial quantity of coconut oil with respect to which oil there has been no previous first domestic processing, except that the tax imposed by this sentence shall not apply when it is established, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, that such coconut oil (whether or not contained in such a combination or mixture), (A) is wholly the production of the Philippine Islands or any other possession of the United States, or (B) was produced wholly from materials the growth or production of the Philippine Islands or any other possession of the United States, or (C) was brought into the United States on or before

the 30th day after the date of the enactment of this Act or produced from materials brought into the United States on or before the 30th day after the date of enactment of this Act, or (D) was purchased under a bona fide contract entered into prior to April 26, 1934, or produced from materials purchased under a bona fide contract entered into prior to April 26, 1934. All taxes collected under this section with respect to coconut oil wholly of Philippine production or produced from materials wholly of Philippine growth or production, shall be held as a separate fund and paid to the Treasury of the Philippine Islands, but if at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this subsection. For the purposes of this section the term "first domestic processing" means the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed, but does not include the use of palm oil in the manufacture of tin plate.

* * * * *

(U. S. C., Title 26, Sec. 999.)

Treasury Regulation 48, promulgated August 17, 1934:

ARTICLE 1. *Definitions.*—When used in these regulations, the term

* * * * *

(l) *First domestic processing* means the first use in the United States on or after the effective date of the Act. At all times

in these regulations, the term *processing* or *first domestic processing* will be deemed to be synonymous with "use" or "first use in the United States on or after the effective date," respectively, * * *

* * * * *

ART. 3. *Imposition of the tax.*—The tax is imposed only on the first domestic processing on or after the effective date of the Act. However, no tax is imposed on the use of palm oil, by the processor, in the manufacture of tin plate.

ART. 4. *When tax attaches.*—(a) The tax attaches upon the first domestic processing of the oil. If some part of the processing of a particular quantity of oil takes place on or after the effective date, the tax attaches notwithstanding that some part of the processing of such quantity took place before the effective date.

(b) If oil has been subjected to any of the processes, either prior to the importation of such oil or prior to the effective date, or both, the tax attaches to the first domestic processing of such oil, after the effective date, in the manufacture or production of an article intended for sale.

U. S. GOVERNMENT PRINTING OFFICE: 1941